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[www.colchestervt.gov](http://www.colchestervt.gov)

Rep. Michael McCarthy, St. Albans  
Vermont State House  
115 State Street  
Montpelier, VT 05633-5301

via email

February 27, 2024

Re: Committee Bill Pre-Empting Local Authority on Ethics

Dear Rep. Michael McCarthy, Chair of Government Operations and Military Affairs Committee and Committee Members,

We are writing on behalf of the Colchester Selectboard and the Colchester Board of Ethics regarding a bill to preempt local authority and responsibility on ethics that is being discussed in your committee. This bill would not improve local government ethics as it would only outsource key responsibilities to a State of Vermont group not involved with local government.

Here is a bit of perspective. Henry David Thoreau espoused the (Thomas) Jeffersonian principle "That government is best which governs the least, because its people discipline themselves."

**What is accomplished through this State policy on Local Government?** As policy makers we must always ask ourselves, what problem is the legislation attempting to solve? Is there a way to address it without preempting local control and responsibility?

We appreciate that the State Ethics Commission, established in 2017 is involved with State level ethics, but which lacks enforcement thereof. State employees, state elected and appointed officials only came under a state policy in 2022. What has changed in two years that needs to be expanded to local government employees, elected and appointed officials for which the State is not legally responsible?

The Commission's report seems to be the genesis of this legislation to move into involvement in municipal ethics. The legislation would increase staffing and costs of the Commission by four times, yet just like their role with the state, still lack authority to take meaningful action in the case of a founded ethical violation.

Local government in Vermont is constructed very differently than the states that the Commission's report suggests we use as a model. In fact, Colchester with its State approved Charter and Selectboard polices is constructed and operated so differently that we have carefully

segregated the ethical and conflict risk for Elected/Appointed into two separate policies which are clearer than our previous policy which co-mingled (as does the State policy) risks for these two different groups.

Ethical misconduct and conflicts of interest by the town staff are personnel related and fall under the purview of the Human Resources Director and Town Manager, with the Selectboard serving as an appeals board before the state or federal courts. It makes no sense for the Selectboard to outsource these responsibilities to another body, local or statewide.

Elected and appointed officials are also the responsibility of the Selectboard as the Selectboard is legally responsible for the actions of those acting on behalf of the town. However, given the scope of the responsibilities of the Selectboard, the Selectboard has created the Board of Ethics to hear allegations of ethical misconduct. Moving our bifurcated and nuanced ethics policies back into a single policy would lose the precision we have developed in our ethics policies, making them more difficult to understand, follow and adjudicate.

We do not support issuing advisories as they take time and resources and are prone to error. For example, if an elected, appointed or employee needs an ethics advisory, they should just be cautionary, ethical and stay clear of the issue. Advisories can look like a “get out of jail free card” and encourage behavior or actions that should be at the least, avoided. Advisories rarely have the same facts of an actual violation. Advisories also need to be tailored to the level of government with very specific knowledge of that government’s operations. What may be acceptable at the State level might be untenable at the local level, or vice-versa.

**Why not consider an alternative local solution?** In 2019, state law on municipal ethics, 24 V.S.A. § 1984 and 2291, was updated and the “may” have a local ethics policy was importantly changed to “shall.” VLCT provided significant guidance and a model policy. With the arrival of COVID in early 2020, Vermont state and local governments generally temporarily ignored this change and focused their attention and efforts at the time, on keeping the majority of their residents alive and healthy. That was the right choice then.

A better approach to a state mandate would be to model, train and implement what we have. Ethics and conflict of interest is a fundamental role of a self-governing organization.

The Colchester Town Charter requires that we have an ethics policy and we have had one once since 2009. The policy creates an Ethics Board. The Board meets to maintain readiness, review its policy, and address complaints.

All board and commission members and regional appointees must read and agree, in writing, to follow the ethics policy before even applying for appointed roles and when they are elected. All officials must acknowledge, in writing, receipt of the policy annually. Employees must review and agree to the policy on their first day at work, during orientation with the Human Resources Director. We have training, conducted by our town attorney for the members of our ethics board, other town boards and associated staff with higher levels of responsibility about ethical issues.

The Town of Colchester adopted its Ethics Policy before there was even a state suggestion in legislation to do so, before there was a State Ethics Board, and before there was a model policy.

We have evolved our policy, so that it is not just a policy, but an Ethics Framework. It begins with our Charter which in two sections addresses both conflicts of interest and ethical conduct, and creates a Board of Ethics, which worked with our attorneys to create polices for elected and appointed officials and employees based on the unique and different situations that can arise.

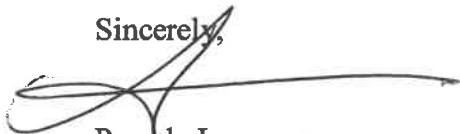
We are also able to work with our staff, elected and appointed officials to address issues according to our policy, but also in a compassionate manner, understanding that we are all accountable to each other. Attachment A provides more information about Colchester's Ethical Framework.

In summary, the statutory language changes will add unnecessary costs and inefficiency to state and local government and will not result in improved ethics. To have an effective ethics policy, you need an ethics framework, adopted and implemented at the same level of government which is regulated by the policy.

**We urge you to abandon this bill** and instead consider this matter over time and truly listen to people involved in local government. The bill as proposed will make Vermont more expensive, less accountable, and more bureaucratic. "Government is best which is closest to the people."

Lyndon B. Johnson

Sincerely,



Pamela Loranger  
Selectboard Chair



Inge Schaefer  
Acting Chair, Colchester Board of Ethics

cc: Government Operations and Military Affairs Committee Members

Rep. Matthew Birong, Vice Chair - Vergennes  
Rep. Mark Higley, Ranking Member - Lowell  
Rep. Lucy Boyden, Clerk - Cambridge  
Rep. Seth Chase - Colchester  
Rep. Lisa Hango - Berkshire  
Rep. Philip Jay Hooper - Randolph  
Rep. Robert Hooper - Burlington  
Rep. Michael Morgan - Milton  
Rep. Michael Mrowicki - Putney  
Rep. Kate Nugent - South Burlington  
Rep. Chea Waters Evans - Charlotte

## Attachment A - Colchester's Ethical Framework

Governance and Town Manager's Town Web Pages:

**Code of Ethics:** Public service is public trust. The affairs of government must be conducted openly, honestly and impartially, so that the public's confidence in the integrity of its municipal affairs shall be maintained. The purposes of the Code of Ethics are:

1. To set forth standards of ethical conduct;
2. To assist Public Officials and Public Members in establishing policy for their conduct
3. And to develop and maintain a tradition of responsible and effective public service.

Municipal employees are responsible to comply with ethical standards in a series of municipal polices and procedures, in fact, far more than in this Code.

Very briefly, a Town official may not engage in any act which is in conflict with, or creates an appearance of conflict with, the performance of official duties.

Click on the link to read the complete Code of Ethics.

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The Colchester Town Charter requires that we have an ethics policy covering both ethical conduct and conflict of interest. The policy creates an Ethics Board. The Board meets to maintain readiness, review its policy, and address complaints. The board, in working with the town attorney determined that it made more sense to separate out employee vs. board policies based on the responsibilities of our particular government as outlined in our charter and policies. All board and commission members and regional appointees must read and agree to follow the ethics policy before even applying for appointed roles and all officials must acknowledge, in writing, receipt of the policy annually. We have training for the ethics board and boards and staff with higher levels of responsibly from our town attorney about ethical issues.

### Town Charter Re Ethics

**Sec. 901. Ethical conduct.** Every officer, elected official, employee, or appointee, in the service of the Town shall abide by standards of ethical conduct established by the Town and shall not hold investments or render services that conflict with or impair the proper discharge of that person's duties or voting authority that cannot be remedied by recusal. No person shall receive any gift or remuneration on account of or in connection with proceedings before any municipal agency in which the person has jurisdiction, nor disclose confidential information acquired by that officer or employee in the course of official duties.

**Sec. 902. Conflict of Interest Policy.** The Selectboard shall adopt a policy regarding ethics and conflict of interest and the means to adjudicate any potential or reported conflicts. This policy shall be published on the Town's website and provided to and signed by every officer, elected official, employee, and appointee to boards or commissions. This policy shall be reviewed,

updated by the Selectboard, and signed by those affected at five-year (5-year) intervals or upon appointment.

Thirteen of the Selectboard's 26 policies address ethics in some ways. We have to fill out forms for our auditor every year called risk assessments for every department, not about ethics but about situations that create risks. The Clerk/Treasurer and Finance Director fill out a form for the Secretary of State and the Selectboard that discloses risks. Our Charter requires an outside independent CPA auditor. We hire one who is skilled at using information about risks in conjunction with their financial audit. The outside auditor has and exercises the authority to ask any staff member any question they want, to look at our inventory and capital assets, and interview and report to Selectboard members without management.

### **Selectboard Level Policies**

1. Cemetery Rules and Regulations dated 2/28/17
2. **Code of Ethics dated 1/26/21**
3. **Delinquent Tax Policy dated 9/1/02**
4. Drug and Alcohol Free Workplace dated 5/24/16
5. Energy Committee Policy dated 10/22/19
6. **Employee Handbook to be dated 5/28/19**
7. Fixed Asset Capitalization and Disposition Policy dated 4/14/15
8. **Fraud Prevention Policy dated 7/24/12**
9. Fund Balance Policy dated 3/8/16
10. **Identity Theft Policy dated 9/8/09**
11. **Investment Policy dated 4/28/22**
12. Liquor License Approval dated 1/28/16
13. Naming Park Policy dated 4/10/07
14. **Parks and Recreation Background Checks dated 5/24/16**
15. **Selectboard General Order #1: Police Department Administration and Police Handbook dated 11/15/23**
16. **Purchasing Policy dated 2/9/10**
17. **Right of Way Policy dated 11/13/07**
18. **Sexual and Other Harassment dated 5/24/16**
19. Smoking Policy dated 9/28/10
20. Snow and Ice Policy dated 7/9/13
21. **Social Media Policy dated 4/12/16**
22. **Surplus Property (Land) Policy dated 11/27/12**
23. Tax Collection Policy dated 7/14/98
24. Traffic Calming Policy dated 5/14/02
25. Various Policies - Applicable Town-wide as a condition of accepting Vermont Community Development Program Funds most recently adopted 5/12/15, but to be readopted 5/24/16 for clarity on applicability:
  - a. Equal Employment Opportunity;

- b. Fair Housing;
  - c. Use of Excessive Force; and
  - d. Drug Free Workplace Act of 1988
26. Various Policies-Applicable to Vermont Community Development Program Grants adopted 5/12/15 but to be readopted 5/24/16 for clarity on applicability:
- a. No Lobbying with VCDP Funds;
  - b. Ethics in Administration of VCDP Program;
  - c. Sub-recipient Monitoring

Staff Level Polices includes complying with Selectboard Polices and Finance Polices and Procedures including Cash Receipts

**Town Ethics Policy for Elected and Appointed Officials:**

[https://clerkshq.com/Content/Attachments/Colchester-vt/policy\\_ethics.pdf?clientSite=Colchester-vt](https://clerkshq.com/Content/Attachments/Colchester-vt/policy_ethics.pdf?clientSite=Colchester-vt)

**Town Ethics Policy for Staff: See pages 46-49**

[https://clerkshq.com/Content/Attachments/Colchester-vt/policy\\_handbook.pdf?clientSite=Colchester-vt](https://clerkshq.com/Content/Attachments/Colchester-vt/policy_handbook.pdf?clientSite=Colchester-vt)

Finally, the Town is subject to an annual external review by a Review on Behalf of the Town Citizens – Annual External Audit by a team of certified public auditors who specialize in government audits. We are audited at the same standards as a company listed on the national stock exchanges.